

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

SEP 16 2005

FILED

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE,

PETITIONER,

VS.

JOANNA JANOUSEK-GREEN,

RESPONDENT.

CONSENT ORDER

CAUSE NO. A-1637

Sep 20, 2005 ACCT# 8521 \$1,200.00
NO-INVOICE
JANOUSEK-GREEN, JOANNA M
CHECK# 7541

In order to resolve this matter, the Nebraska Department of Insurance ("Department"), by and through its attorney, Michael C. Boyd and Joanna Janousek-Green, ("Respondent"), mutually stipulate and agree as follows:

JURISDICTION

1. The Department has jurisdiction over the subject matter and Respondent pursuant to Neb. Rev. Stat. §44-101.01 and §44-4047, et seq.

2. Respondent was licensed as an insurance agent under the laws of Nebraska at all times material hereto. Respondent's registered address with the Department of Insurance is Bankers Life and Casualty Co., 4535 Normal Blvd., Suite 105, Lincoln, Nebraska 68506.

STIPULATIONS OF FACT

1. The Department initiated this administrative proceeding by filing a petition styled State of Nebraska Department of Insurance vs. Joanna Janousek-Green on September 2, 2005. A copy of the petition was served upon the Respondent at the Respondent's address registered with the Department by certified mail, return receipt requested.

2. The petition alleges that Respondent violated Neb. Rev. Stat. §§44-4059(1)(b), 44-4059(1)(h), 44-4059(1)(l) and 44-4060 (1) as follows:

- a. On or about January 14, 2005, Francis M. Shultz and Wilma D. Shultz, ("Shultzs"), signed a Bankers Life & Casualty ("BL&C") application for a single premium deferred annuity ("annuity") as owner and annuitant/contingent owner respectively, and tendered the premium check payable to BL&C to Agent Carl Clark ("Clark") who solicited the BL&C annuity application. The BL&C annuity policy #7806866 was issued with an effective date of January 19, 2005, and Clark delivered the policy to the Shultzs on February 2, 2005. (At all times material hereto, Agent Clark was solely licensed to sell, solicit or negotiate sickness, accident and health insurance in the State of Nebraska. He was never licensed to sell, solicit or negotiate life insurance or annuities.)
- b. On or about March 18, 2005, the Nebraska Department of Insurance received a complaint from the Shultzs that contained a number of allegations of misconduct by Agent Clark, including an allegation that Clark had "required" the Shultzs to cash a Certificate of Deposit ("CD") to purchase an annuity through him with BL&C as mentioned in subparagraph 3(a) above.
- c. On or about March 23, 2005, Barbara Ems ("Ems"), an insurance investigator for the Consumer Affairs Division of the Nebraska Department of Insurance, wrote to BL&C requesting its evaluation of the Shultzs' various allegations, which included the solicitation and sale of the annuity to them by Agent Clark. Additionally, Ms. Ems wrote to Clark requesting his response to the Shultzs' various allegations of misconduct, including the solicitation and sale of the annuity to them.
- d. On or about May 6, 2005, BL&C submitted its response to the Nebraska Department of Insurance that noted "in view of any misunderstanding" BL&C had voided the annuity policy and refunded the \$56,000 premium. BL&C had also requested a statement from Clark to respond to the Shultzs' allegations, including the alleged misconduct in the solicitation and sale of the annuity to them. In his statement, Clark said that in response to the Shultzs' inquiry about BL&C's products, he told the Shultzs about them. They had a CD that was maturing, and Clark called Respondent on January 11, 2005 about the Shultzs' interest in a BL&C annuity. Clark further claimed that both he and Respondent went to see the Shultzs on January 14, 2005 and Respondent wrote their application for the BL&C annuity. After the annuity was issued, Clark delivered the annuity to the Shultzs on February 2, 2005. Due to her apparent role in the sale of the annuity to the Shultz, BL&C also requested a statement from Respondent about her involvement in that annuity insurance transaction. In her statement to BL&C, Respondent said that Agent Clark called her on January 11, 2005 regarding the Shultzs' interest in obtaining an annuity policy as they had a

CD that was due to mature and the annuity's 5.5% interest was an attractive alternative. She confirmed Agent Clark's statement that she (along with Clark) went to the Shultzs to write the annuity on January 14, 2005. She said she completed the Shultzs' annuity application and collected their premium check. When the annuity policy was issued, it was sent to her office. She sent it on to Agent Clark to deliver to them, which he did on February 2, 2005.

- e. On or about May 9, 2005, BL&C spoke with Ms. Ems by phone to advise that Respondent had spoken with her BL&C branch manager and had retracted her initial statement that is paraphrased in subparagraph 3 (d) above. Respondent now states that she was not present when the annuity was signed. BL&C told Ms. Ems they would send Respondent's retraction of her earlier statement to her at the Department.
- f. On or about May 10, 2005, BL&C submitted Respondent's retraction statement to Ms. Ems. In her retraction, Respondent advised she was not present when Agent Clark had the Shultzs sign the annuity application. She said Clark had talked with her previously about their interest in the annuity, and she had inquired of him when she could call upon them. Clark told her the Shultzs had no questions and wanted to do the annuity so he had the annuity application signed and mailed to Respondent to complete.
- g. On or about July 11, 2005, Ms. Ems wrote to Respondent requesting complete details on the solicitation, completion, and submission of the Shultzs' annuity application, as well as whether Respondent had shared the commission earned on the annuity policy sale with Agent Clark.
- h. On or about July 18, 2005, Respondent submitted her written response to Ms. Ems. In her response, she advised that she had been called by Agent Clark on January 11, 2005 about his clients (Shultzs) who were very interested in annuities as they had a CD due to mature and liked the idea of getting 5.5% initial interest on the annuity policy funds. Respondent inquired about meeting the Shultzs to talk to them about the annuity, but Clark told her the Shultzs had no questions and were deciding whether or not to apply for an annuity. Then on January 14, 2005, Agent Clark met with the Shultzs and had them sign the annuity application and accompanying documents. Respondent was not present when the annuity application and accompanying documents were signed. The annuity application and accompanying documents, along with the Shultzs' \$56,000 premium check and a copy of the receipt completed by Clark were mailed to Respondent and received on January 18, 2005 along with information Clark had obtained from the Shultzs that she would need to complete the information required on the annuity application which she would then sign as the licensed resident agent. She submitted the completed annuity application, along with the Shultzs' premium check to her branch office that same day, and it was then sent on to the BL&C home office. Respondent advised that the reason

she signed the annuity application as the licensed resident agent was because Agent Clark was not licensed in the State of Nebraska to sell, solicit, or negotiate life insurance or annuities, and so BL&C would not be able to process and issue an annuity policy he had solicited and sold. BL&C did issue the annuity policy applied for by the Shultzs, and it was sent to Respondent for delivery. She sent the annuity policy to Clark to deliver to the Shultzs. Respondent was paid a sales commission of \$1,960 for the Shultzs' annuity by BL&C, and pursuant to her agreement with Clark she paid him \$900 as a nearly 50/50% split of that commission. She paid Clark this commission split by check on February 8, 2005 and he cashed the check shortly thereafter. She admitted that this commission split with an agent not licensed to sell annuities in Nebraska was wrong, as was her agreeing with Agent Clark to submit as the licensed agent the Shultzs' annuity application as though she had solicited it, asked the questions of the applicants and recorded their answers, and obtained the premium for their policy when she had not done so. She also admitted she lied in her original statement to BL&C as she was afraid of admitting the truth and Clark had assured her that if they "kept to their original story" nothing would happen. However, she decided she had to retract that statement and admit to the true facts surrounding the solicitation and sale of the BL&C annuity policy # 7806866 to the Shultzs.

3. Respondent was informed of her right to a public hearing. Respondent waives that right, and enters into this Consent Order freely and voluntarily. Respondent understands and acknowledges that by waiving her right to a public hearing, Respondent also waives her right to confrontation of witnesses, production of evidence, and judicial review.

4. Respondent admits the allegations contained in the Petition and restated in Paragraph #2 above.


CONCLUSIONS OF LAW

Respondent's conduct as alleged above constitutes a violation of Neb. Rev. Stat. §§44-4059(1)(b), 44-4059(1)(h), 44-4059(1)(l), and 44-4060 (1).

CONSENT ORDER

It is therefore ordered by the Director of Insurance and agreed to by Respondent, Joanna Janousek-Green, that Respondent shall pay an administrative fine of \$1,200. The fine shall be paid in total within thirty (30) days from the date the Director of the Department of Insurance affixes his signature to this document and approves said consent agreement. The Nebraska Department of Insurance shall retain jurisdiction of this matter for the purpose of enabling the Respondent or the Department to make application for such further orders as may be necessary.

In witness of their intention to be bound by this Consent Order, each party has executed this document by subscribing his signature below.


Michael C. Boyd
Attorney for Nebraska
Department of Insurance
941 "O" Street, Suite 400
Lincoln, Nebraska 68508
(402)471-2201

Date 9/15/05

Danna Joseph Chen
Respondent
9/13/05
Date

State of Nebraska)
) ss.
County of Lancaster)

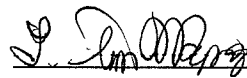
On this 13th day of September, 2005, Joanna Janousek-Green personally appeared before me and read this Consent Order, executed the same and acknowledged the same to be her voluntary act and deed.

Kristi K Tracy
Notary Public



I hereby certify that the foregoing Consent Order is adopted as the Final Order of the
Nebraska Department of Insurance in the matter of State of Nebraska Department of Insurance vs.
Joanna Janousek-Green, Cause No. A-1637.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



L. TIM WAGNER
Director of Insurance

September 16, 2005
Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the executed Consent Order was sent to the Respondent at
Bankers Life and Casualty Co., 4535 Normal Blvd., Suite 105, Lincoln, Nebraska 68506, by
certified mail, return receipt requested on this 16th day of September, 2005.

